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BOOK OF ABSTRACTS

1. They don't care about the legal niceties, they just wonder why some parts are managed better': law's role in the privatisation of public space

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Abstract

Private urban governance, according to libertarian economics, may be an efficient way of delivering public goods and an improvement over traditional forms of government. However, this paper contends that such arguments ignore power relationships and issues of exclusion. It examines the role of law in creating spaces of private governance, and the exclusionary impact which it sustains. Law's business is boundaries, and it is argued that the boundaries which exclude specific individuals and groups from particular places are determined by power relationships and by rights of access to place. Thus power relations are mediated through spatial practice, and established and maintained by the law. We ignore these 'legal niceties' at our peril.

The law and geography literature (e.g. Holder and Harrison, 2003) has focused on the role of law in relation to public space, for instance the 'purification of space' by which law is used to exclude the homeless from public places. It has also emphasised the crucial distinction in property law between public and private space, which simultaneously creates 'a boundary between public and private power' (Reich, 1964, p. 771). This paper extends these analyses to new forms of hybrid public/private property.

Different legal issues are raised by the question of whether non-members may be excluded by private bodies operating in quasi-public places (Gray and Gray, 1999). A doctrine of reasonable access has been recognised by the courts in the United States, Canada and Australia, which the European Commission of Human Rights has declined to follow. Further, the English law of trespass permits anyone considered undesirable to be refused access to spaces of private urban governance, even when (as in the case of shopping centres) an implicit invitation is issued to all members of the public. Thus the law in its various forms remains central to the maintenance of exclusionary boundaries.

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2. Legal Incoherence and the Extra-Constitutional Law of Regulatory Takings: The Canadian Experience

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The Canadian experience demonstrates that the absence of written constitutional limitations on a state's power to expropriate does not preclude the development of extra-constitutional restrictions, including those prescribed in international treaties and declarations, Foreign Investment Protection and Promotion Agreements (FIPAs) and (in the Commonwealth context) the common law. A comprehensive Canadian jurisprudence of *regulatory* takings, however, has been slow to develop, owing in part to historical deference to the state's interest in orderly development, but also to judicial disinterest in the subject. As a result, regulatory takings law in Canada risks incoherence in two senses: *externally*, referencing the interplay between the law of regulatory takings law and other areas of law (this concern extends beyond Canada to any state which relies on extra-constitutional channels); and *internally*, referencing the treatment of regulatory takings as such.

Jurisdictions that simultaneously lack a comprehensive jurisprudence governing regulatory takings while entering into FIPAs find that their previously unbounded legislative power is now legally constrained. Domestic regulatory measures that meet the threshold of domestic legality might still be deemed tantamount to expropriation, entitling FIPA party state investors to compensation. The extra-constitutional law of regulatory takings is, in such circumstances, no longer what domestic courts say it is. Broadly conceived so as to embrace protection against incidental interference with use and enjoyment of property, it now affords stronger protections (at least to certain claimants) than the domestic law expressly contemplates. Canadian regulatory takings law demonstrates the risk in such circumstances of external incoherence, arising from a disconnect between the judicial understanding of regulatory takings and the obligations of FIPA signatories.

Because Canadian jurisprudence lacks the doctrinal rigour of jurisdictions with constitutional takings clauses, the risk to legal coherence is also internal to regulatory takings doctrine. Recent caselaw suggests that a regulatory taking must entail actual state acquisition of a

beneficial interest in the subject property. This, however, collapses the distinction between the regulatory taking and actual expropriation. While this criticism presupposes that the regulatory taking is fictitious, its recognition as a taking is nonetheless sensible to the link between a regulatory stripping of all rights of use and enjoyment of property on one hand, and the reality of expropriation of title on the other. As such, it invites us to understand the ramifications of the state's action in a manner that conforms to the law's general orientation reflecting widely held norms favouring some measure of protection for property rights.

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3. The Call for Statutory Tools in Urban Regeneration - The Development of Danish Planning Legislation

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Abstract

Older industrial- and harbor areas are undergoing dramatic transformations these years due to several alterations in some basic structures in society; e.g. globalization resulting in moving-out of manpower intensive production to low pay regions, changes in the structure of transports resulting in more land-based freight and less shipping, amalgamation of industries and re-location due to new localization parameters. As the case may be, these structural alterations bring about more or less abandoned and worn-down areas. Typically, the areas are located centrally in the towns. With that, they hold a substantial need for redevelopment and revitalization from an urban planning and management point of view as well as a considerable development potential, as the areas generally offer an attractive possibility for building new housing, offices and other white-collar workplaces.

However, redevelopment of these older business areas faces great challenges; especially compared to urban (re)development in general. The property structure and ownerships are often complex and need re-composition to meet new land uses, the soil may be polluted from former activities implying large clearing costs, the areas may have a low accessibility due to their localization between other built-up areas, and often the areas are not totally abandoned as they may still hold a few vigorous enterprises having an adverse impact on the environment.

Transformation of these 'brown areas' into new appealing parts of the towns requires that the planning authorities are able to overcome this kind of challenges. To do so they need appropriate skills and tools. The paper presents the statutory tools made available by means of a number of amendments to Danish legislation during the last decade. Next, the sufficiency of the statutory tools is discussed on the background of a number of cases on planning and implementation of urban regeneration in practice. The paper concludes that the development

of Danish planning legislation has provided some useful tools, but the toolbox must still be considered somewhat insufficient compared to the challenges in practice.

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4. Non-financial compensation in spatial planning: knowledge transfer in practice in different countries

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Non-financial compensation as incentive structure for spatial developments is getting increasingly popular in diverse international spatial planning practices. The concept roots in management theories. As the concept of non-financial compensation has been elaborated in different countries, the comparativeness of the practices seems to be of interest. Although all based on the same theoretical roots, the contents of the different practices as well as the context are quite different. Can the different international experiences be helpful with respect to other and new initiatives in non-financial compensation? Can knowledge from one country be easily transferred to other planning practices? What are the changes and challenges?

There is a lot of academic literature on cross-national comparison of planning frameworks and planning practices or on trans-national and trans-regional initiatives and their impact on planning in European countries (De Jong, 2007). There are also many examples of comparing cases in different countries. These types of knowledge transfer could be typified as inspiration and learning. There is, however, not yet a lot of attention on transplantation of knowledge.

In this paper we distinguish three levels of increasing intensity in knowledge transfer when comparing practices across countries: (1) inspiration, (2) learning, and (3) transplantation, including the strengths and weaknesses of each step. Each level will be illustrated with examples from the non-financial planning practice with emphasis on institutional factors influencing knowledge transfers.

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5. Eminent Domain in the public practices of land acquisitions in Latin American and Caribbean region. A firs approximation

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Government conditions in the Latin-American and Caribbean region (LAC) for private land acquisition determined the actual implementation of many urban policies, particularly the ones that improve the housing conditions and the access to city attributes for most of the poor. The classic eminent domain scheme, a State power element, and an instrument for land policy, is the starting point to understand the LAC governments options for public land acquisition. Although this is quite an important theme, there is scant literature on it. It is difficult to find works analyzing the legal framework inclusive at the constitutional level. The knowledge of public practices to acquire land for public goals (including the legal control) is not documented either. The absence of research in this theme does not allow us to get close to the real conditions of LAC region's government to use the instrument for acquiring land. How ever there is not a lack of documented knowledge, we find some impressions about what is going on in the current scenario such as: negotiated expropriation, judments that turn out very expensive for the public resources, or the state capacity to obtain private land using the enforcement of compliance with urban norms. This paper attempts to do an initial opening of the "black box" of urban expropriation in the Latin-American and Caribbean region that would allow us to get an idea of the real power available in this governments to use the expropiation when private land is necessary for providing public goods. Given this scenario, how do we actually start opening the "black box" of public expropriation practices in LAC as a strategy to acquire land? We propose two ways, far from substitutes but rather complimentary. The first is studying the legal framework for expropriation in LAC. The second is getting close to some actual practices where different actors –public and private– set up the framework for using the expropriation. The second way also allow us the space of the government action and the interpretation and meaning of property rights and sovereignty. The universe for this exercise includes Mexico, Guatemala, Nicaragua, Dominican Republic, El Salvador, Costa Rica, Panama, Colombia, Equador, Peru, Bolivia, Uruguay, Brazil and Argentina. The analysis take places on May, 2007.

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6. The increased Constitutional protection of forests in Greece. The disproportionate consideration of property and its housing development due to lack of compensation. The strict jurisprudence of the Council of State. The possibilities for a new prospect towards total sustainable management

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The destination of forests and woody lands consists of the safeguarding of ecological balance and the improvement of the quality of life. The protection of the forest ecosystems in Greece undoubtfully constitutes an issue of utmost social, political and economic significance. The causative basis of this is on one hand the housing pressures that are exerted on forests and woody lands and on the other hand, the big unsatisfied expectation rights that have been connected with their development.

The Greek legal order has an adequate legislative framework of forest protection, while the articles 24 paragraph 1 and 117 paragraph 3, 4 of the Greek Constitution, which constitute a strong and strict status quo for the protection of forests and woody lands, prevail. An essential point of these clauses is first the prohibition of the alteration of the destination of forests and woody lands, and second, the compulsory process of reforestation of destroyed forests and woody lands. Under the context of the above constitutional commands, the Council of State, taking an exceptionally strict jurisprudence attitude, came forward with adjudications aiming to prohibit any kind of change to forests.

The jurisprudence of the Council of State, adjudged that, neither the possibility of integration, under provisions, to the housing areas of public forests and woody lands is allowed, nor the integration of forests with the extension of city plans or street plans is allowed, invalidating in this way, many law clauses as unconstitutional. The change into building plots and the use of forests for housing purposes is prohibited by the Constitution.

This holistic strictness of the constitutional clauses and of the fixed and strict jurisprudence of the Council of State leads to a disproportionate confronting of property in the framework of economic liberty, as well as in relation to the lack of compensation from the total or partial

deprivation of use to landlords. The abundant jurisprudence of the Council of State shows an unequal treatment of the ownership, in favour of the protection of the forests.

In the proposed paper, the increased constitutional protection of the forests is explored, as well as the prohibition of their housing development and the degree to which this prohibition affects property rights without compensation under the criterion of fair balance between the bilateral legitimate goods, in the context of the jurisprudence of the Council of State and the European Court of Human Rights (ECHR). In parallel, some opinions towards a balanced development of these rights is shaped, in the framework of sustainable management.

Key words: forests, Constitution, restrictions, property, city plans compensation, jurisprudence.

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7. Affordable Housing in the Urban Regeneration process: the Italian way

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ABSTRACT

Though neglected since long time, the housing problem has arisen in Italy in late years as a consequence both of the striking increasing costs of residential units, and of the shortage of a rental market, especially for low income target, seriously affected by the scarcity of public funds. Only the 20% of the occupied stock is tenancy, one fourth of which (one million units approximately) is actually social housing.

This Italian anomaly, compared to other European countries, is the very result of fifty years' encouraging homeownership policies, without a permanent support to rental and affordable houses.

During the 60's and 70's, the emergency-led answer has frequently produced modest neighbourhoods (on the outskirts, hardly served by the public transport, with poor living quality), mainly obtained through the expropriation of land and the construction and poor maintenance of buildings, largely financed with central state or regional funds.

In late years, the national budget deficiency and the strong decline of public funds from regional to municipal level has driven to the selling off of public patrimony and to the query of a normative frame, enacted at the national level, supporting different targeted housing policies.

Some recent experiences in large and middle sized Italian cities encourage this trend, exploiting public/private partnerships in urban change, in order to:

- minimize expropriation and grant free donation of land to the municipality for social housing, through the "transfer of development rights program" ("perequazione")
- assure free donation of a portion of residential units, through the negotiating process or through "perequazione" as well
- provide a social mix with subsidised, rental, homeownerhip housing stock
- introduce tax credits as incentives to address private capital to social housing provision.

Considering different cases the paper explores how urban regeneration may provide an inclusionary and mixed used city, where private redevelopments contribute to housing betterment.

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8. The Acquisition & Disposal of Land with a Dubious History

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Environmental Liability

Due Diligence in Property Transactions

Abstract

One result of environmental law and domestic planning systems becoming more sophisticated is the need for those involved in the sale and purchase of land to ascertain the extent of their environmental liability.The result is the undertaking of a risk analysis which, hopefully, will prevent or minimise the likelihood of any potential liability.The role of environmental due diligence is to give a vendor or purchaser the opportunity to ascertain and assemble all the environmental information relating to the subject site. Although the objectives will be the same,whether seller or purchaser, the processes involved will usually be different. The seller's information will frequently be placed n a presentation pack along side other marketing arterials. Its aim is to make the purchase or letting of the subject property as attractive as possible while giving purchasers information relating to the land. Usually, sellers prefer to see potential purchasers make an environmental investigation at their own cost. Where the purchaser follows this route procedures can be even more technical and protracted! The aim of this paper is to identify those matters which should be addressed in a properly conducted due diligence exercise in order to reduce the likelihood of environmental liability to a minimum. The various issues comprised in a viable due diligence exercise will be considered including assessment of energy performance of buildings and climate change. The paper will emphasise that different aspects of the due diligence exercise are required depending on the type of land and buildings involved. Here, the role of the lawyer in managing the process will be explored. The advantages and disadvantages of the risk analysis to interested parties will be considered while suggestions will also be made as to how effective handling of the exercise can assist those involved.

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9. TERRITORIAL IMPACT ASSESSMENT OF SECTOR POLICIES - A TOOL FOR BETTER IMPLEMENTATION OF THE SPATIAL PLANNING ACT

A case study of Slovenian spatial planning system and energy sector policy

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Spatial planning is an interdisciplinary field which includes different sectors' professionals. The relationship among them should be mutual so that sectors would obey territorial principles and objectives when they set up their own policies and plans. Unfortunately, this is not a common practice and when we look for the causes for poor implementation of spatial planning acts we come down to discrepancies between sector policies and corresponding preparation procedures of regulatory documents. To improve that and the whole regulatory system of EU communication paper for better regulation (COM (2002) 276 final) was adopted in 2002. It introduced impact assessment of regulatory documents. Having in mind Gothenburg-strategy of sustainable development, White Book of Governance and European Spatial Development Strategy EU countries have set up their own praxis and procedures which differ in purpose and emphasis but they all try to identify major impacts of proposed measures. Additionally to various impact assessments of which environmental impact assessment has been mostly known and practised, territorial impact assessment has been introduced.

Usually, this method is applied to major infrastructure projects, projects of water management, designing of spatial strategies with the general EU objective to improve territorial cohesion. Territorial impact assessment has been formally scoped within the Third report on economic and social cohesion which also officially add territorial cohesion to the EU objectives. Results of ESPON projects which cover the key theme Policy impact projects have shown that all major sector policies (in)directly influence the territory so they need to be managed collectively. As one possible approach to tackle this, a method TEQUILA was presented by Camagni. It defines three elements of territorial cohesion: territorial efficiency, territorial identity and territorial quality which can be used to cross sector objectives with territorial ones. Since territorial impact assessment is not obligatory there are no rules when or

how to use it. It can be included into formal policy preparation process, it can serve as an independent tool to assess already adopted policies or to find a possible policy alternative.

Slovenia is no exception when talking about discrepancies between spatial planning and other sectors. The regulation of spatial planning system has been constantly changing which further more magnifies insufficient cooperation between the sectors. They are govern independently and are beside that under string influence and dominance of policy investors and capital. To improve the situation a project called Monitoring and territorial impact assessment of sector policies has been set up on national level. Its major objective is to find an answer to the question: What and how if so do sector policies add up to the implementation of spatial development objectives?

First thing to be done is to define the scope of the evaluation. In Spatial Planning Act from 2003, of which some articles are still valid, Spatial Development Strategy of Slovenia was defined as the crucial national regulatory document of spatial planning policy. It also integrates guidelines of EU territorial cohesion policy therefore it has been chosen as a relevant frame. Due to a massive extent of single sector policies one particular has to be chosen. Since it is one of world, EU and Slovenian major issues and is strongly connected to the territory we have selected energy sector. The evaluation of existing and possible links between the sectors will be done with the help of the territorial impact assessment method. Partly the method is based on the EU practice partly it has been adapted to Slovenian needs and state of arts. To face territorial and sector objectives a matrix approach is used in an interactive assessment tool. In preliminary assessment project group will evaluate possible influences and interconnections between the policies which will be applied to the regional level later on. This will show whether and how if energy sector causes impacts in the physical reality with its (in)direct measures. During formation of the model several issues have been raised, for example how to tackle complexity and different territorial levels of policies, how broaden should the scope be, which energy sector's regulatory documents take into account within the measures' list with various significance to the territory, insufficient availability of existing sector data for chosen spatial unit, etc.

For the moment, only interim results are available. Once again, it has been shown that territorial complexity is due to its extent in social, economic and environmental terms very difficult to regulate. It can be done only if sector policies are jointly prepared. This paper

presents one method which can help policy makers to make their policies efficient, well coordinated and implemented, presuming the territorial impact assessment is proceeded in the policy preparation procedure. In such a way territorial cohesion as a major spatial planning regulation cohesion would be improved. More to that, conflicts which are raised during implementation of the sector policies would be lessen. Finally, this would also return to the spatial planning act its fundamental function – to regulate the territorial development in its most complex sense.

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Suggested topic area to place the paper:
- comparative analysis
- any other issues relating to planning and law

10. Property Rights Redistribution, Entitlement Failure and the Impoverishment of Landless Peasants: A Tale of Two Villages in Xi'an, China

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Abstract:

In constituting new institutions for a market economy, a variety of property rights are redistributed between the state, the collective, the private sector and individual in China. Within the process of urban expansion through land requisition, peasants' *de facto* rights to collective land, including farmland and housing plots (zhaijidi), are forcedly redistributed to the state and thereafter to private developers, to facilitate urban-based economic growth. Deprived of a secured livelihood, some landless peasants become trapped in poverty. This paper analyses the impoverishment of peasants caught up in China's relentless urban expansion program, through the perspectives of property rights redistribution and the entitlement approach. Representing two major forms of land requisition, two villages in Xi'an, China show how peasants' rights over farmland and housing plots were affected in different ways and how their respective entitlement sets shifted. The story of the two villages elaborate in detail how, during the process of land requisition, the property rights structure of collective land is altered in favour of the state and private investors' interests, rather than peasants' interests. In one village, peasants' rights over both farmland and housing land were deprived by the state. Since they were not offered a reasonable compensation package, the property rights redistribution between the collective and the state has directly resulted in entitlement failure among many landless peasants. In the other village, peasants' farmland was transferred to urban land, while their *de facto* rights over their housing land remain unchanged. These peasants temporarily develop a survival strategy by taking advantage of their rights to housing land, i.e. building more houses on the land and renting them out. Nevertheless, they soon face the risk of entitlement decline as their rights over housing land are going to be taken away by the state. In both villages, without clearly defined property rights to rural land, there is no scope for peasants to negotiate a compensation package reflecting the true value of land they given up, i.e. the true cost of re-establishing a viable

livelihood in the city. We argue that poorly defined property rights and their unequal redistribution directly result in the impoverishment of landless peasants.

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11. Responsive Land Policy in an XL context – the case of Germany's 30 hectares goal

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Landowners find restrictions on the use of their property more plausible if the restrictions pursue a local purpose. Of course, I want my neighbors to use their land with consideration to my property. I shall also respect my neighbors' property, at least if this is necessary to obtain their consideration. Mutual respect is the basis of traditional nuisance law and – drawing from this tradition – planning regulation. This requires what can be called S or M land policy.

But what about land use restrictions that pursue a national, transnational, or even a global goal? What about XL and XXL land policy?

Take, for example, Germany's 30 hectares goal, a national initiative to protect open space. The Council for Sustainable Development (Rat für Nachhaltige Entwicklung), in 2004, has proclaimed that from the year 2020 on, no more that 30 hectares of open space must be converted per day to building land. The goal goes back to the national debate on sustainable development in the 1990s (when Angela Merkel was Federal Minister for the Environment). The current coalition parties have included the "30 hectares goal" into their compact (11 November 2005); they have added the idea that this goal must be implemented through "financial incentives".

Although the "30 hectares goal" has been intensely discussed over the past years, nobody has come up yet with a wonderful solution as to how this goal can be implemented. The current discussion which focuses on brown field redevelopment and similarly petty stuff is dissatisfying. Even if you redevelop all of the Ruhr's brown fields, under the "30 hectares goal" no more than about 10 or 20 days can be expected from brown field redevelopment. Also, the current discussion mostly focuses on bureaucracy: How can regional planning authorities coerce municipal planning authorities into obedience to the "30 hectares goal"? This is not the key issue. The municipalities do not own the land, so they can do only little to determine its use. Why does nobody talk about the landowners?

Maybe because the labeling of the "30 hectares goal" is very misleading. In fact, the goal is **to preserve 310.000 km²** from development (the stunning number derives from Germany's total land area, the size of today's settlement area, and a calculation involving 120 ha/day and the

year 2020). There is hardly anything XL about 30 hectares per day, but the preservation of 310.000 km² certainly poses stimulating questions for planning and land policy. What strategies would be required to achieve this XL land policy goal?

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12. Institutional changes and the level of maturity of the Polish real estate market

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Abstract

The nature and scope of the property right and thus the possible maximization of value depend on the institutional framework (Eggertson 1996). The property right allows to take advantage of resources, but this applies to a specific society; the right is a social institution that does not have a natural character and is susceptible to changes (Alchian, Demsetz 1973). The degree of protection of the property right is determined by the institutional system.

Poland's economic transition restored the fully market meaning of rights to real estate. However, an efficient system must function for their application to be complete, guaranteeing reliable information on real estate's legal status, its physical and fiscal characteristics, and ensuring the security of transactions. Despite their fundamental importance, the requirements have not been completely satisfied yet.

The article aims to investigate the causes and the course of the Land Registry system reform in Poland. The author discusses the progress of the reform and its influence on the level of maturity of the Polish real estate market.

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13. Process of Coping with Social and Economic Changes: Chinese Urban Planning System in Transition

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Abstract

China is a country that has developed from a centrally planned economy to a market economy and maintained its economic development at an average annual rate of 10% during last three decades. After 30 years rapid economic development, China has been transformed from a poor developing country into one of the world's leading economic players. Three decades of rapid social and economic development, closely associated with rapid urbanisation and significant rural-urban migration has created great challenges in terms of environment, social equity, regional polarisation and sustainable development. The planning system that was initially established in the centrally planned economy has inevitably played an important role in the process and its characteristic. "Plan-led" approach to development is still the main development policy followed by the Chinese government. By assessing the changes of social and economic development since 1949, this paper is particularly interesting to examine how Chinese planning coped with the changes in the transition from a centrally planned economy to a market economy including several innovative planning approaches to cope with the changes; why the planning is regarded as main policy to guide the development, and what the underpinning concepts of the Chinese planning system. Several challenges confronting planning system are also raised for analysis.

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14. PLANNING LORE AND LAW FOR ABORIGINAL CULTURAL HERITAGE PROTECTION: THE STATE OF VICTORIA, AUSTRALIA, AS A CASE STUDY.

Rebecca Leshinsky

Australia possesses a particular Euro-Indigenous history whereby its early settlers through ethnic cleansing, genocide, exclusion and assimilation devastated indigenous Aboriginal population(s) and provided white settlers with an opportunity to gain control over large tracts of Australian land. Important for the 21st century is a proper recording of the history of Aboriginal lore and the place for law in this context. The doctrine of native title was established by the Australian High Court in *Mabo v Queensland (No 2)* (1992) 175 CLR 1. Continuity with the land is vital for Australian Aboriginal native title land rights. Accordingly, on-going cultural heritage preservation is of major significance for Aboriginal property rights.

Australia voted against the UN Declaration on the rights of indigenous peoples. In 2007, Aboriginal cultural heritage protection law for the State of Victoria moved from Federal to State jurisdiction. Municipalities, and planning law in particular, now plays an essential role in implementing and enforcing protection of Aboriginal cultural heritage values, sites and places.

The paper aims to critically examine relevant law, policy and governance which protect Aboriginal cultural heritage sites and places in the State of Victoria, Australia. Comparative national and international models will be raised.

As part of the critical discussion about existing Australian cultural heritage protection law and policy, qualitative data will be collected from the traditional owners of the land in two Municipalities in the State of Victoria: City of Monash and City of Hume. From the literature review, comparative models and data analysis, it is anticipated, in a modest manner, that important law reform issues could be raised regarding cultural heritage protection law and praxis which is now of direct relevance to the unity in planning, institutions and law.

15. Using Planning, Legal and Institutional Economic theory to Develop a Case Study Methodology for Planning, Law and Property Rights Research

Evelien van Rij

In the process of planning becoming effective institutions play a key role. Researchers in the field of planning institutions are confronted with many different theories, for example planning theory, transaction cost theory and network theory. These theories have been formulated in various research fields such as geography, law, land development, planning, rural economics, institutional economics and policy analysis. Williamson (1998) made a distinction into four categories of institutions, each with a specific theory: informal institutions with social theory, formal rules with property rights and legal theory, governance structures and contracts with transaction cost economics and recourse allocation in a market with Neo-Classical economic and agency theory. However, for research in planning institutions, his distinction is oversimplified. For the development of a methodology for research in the field of planning, law and property rights, it is important to answer the following questions. Which combination of theories can be used for this kind of research and why? How can such a combination of theories be applied?

During case study research on institutions for metropolitan green area preservation, I elaborated a multiple theory framework. This paper describes why, for my dissertation, I used theories as transaction cost theory, network theory and legal theory to analyze the working of these institutions in practise. Inspired by the concept of grounded theory, the selection of theories was mainly based on case study field work. During the research, I examined the question which topics can be analyzed in terms of transaction cost theory and property rights theory and which not. Why did I need other theories too? The paper explains in which cases specific theories are needed to study specific topics and in which cases different theories are valuable to study a single topic according to various criteria. Also attention is paid to the question how a research framework can be set up to conduct this kind of research. Insight in the potentials of a combined use of these theories and methodologies can provide a better connection between empirical research and theory. In this way, the research field of planning, law and property rights can be elaborated further. Besides, mono-disciplinary researchers trained in a single research field can use these ideas on combined theory and methodology to get more insight in the potentials of the field of planning, law and property rights.

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16. Land Expropriation, Local Resistance, and Legitimacy-seeking: Two Cases in South Korea (1999-2003)

Chang Bum Ju

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Governments often resort to the power of expropriation when they plan to obtain land for development within rural areas surrounding central cities (Alterman 1990). In Korea, the power of expropriation is based on a special law supported by the Constitution of Korea (Article 23 (3)). The law authorizes governments to expropriate land for any "public need," which is often the focus of disputes between governments and local landowners and residents.

It is public authorities that determine what "public need" means and refers to. In Korea, the Ministry of Construction and Transportation makes expropriation decisions. These decisions often do not represent preferences of local landowners and residents, and thus may lead to confrontation, in courts or on streets, between public authorities and local villagers. Some expropriation plans are implemented in accordance with legal authority while others are aborted mainly due to local resistance.

Despite the unstable nature of expropriation, seldom explored in most studies is the question of how disputes caused by government expropriation are resolved between governments and local landowners and residents. Investigating this research question is important, because it shows complexity and dynamics involving land expropriation, and because it suggests policy implications of when expropriation can be a feasible land policy and when expropriation should be avoided. Such understanding saves society unnecessary social costs triggered by top-down government expropriation decisions.

This study analyzes in detail two cases of confrontation between public authorities and landowners/local residents in Korea in the early 2000s in an effort to throw light on why local landowners and residents succeeded or failed in preventing government expropriation from being implemented in their rural villages. In this paper, I will emphasize the importance of legitimacy that local landowners and residents attempt to seek from the wider society in order to abort government expropriation plans (Tang and Tang 2003).

The immediate goals of these two challenges to the government were the same: to protect mountainous areas near rural villages from development sponsored by government agencies. In each case, an environment NGO played a key role. Each NGO jointly worked

with the uprising residents in each area. In order to attain its desired outcomes, each NGO used the same major tactic, which is, purchasing a parcel of land with donations from hundreds of the residents and outside citizens to deter the advancement of the developments.

The difference between the two challenges to government development could be found in their strategic adaptations. The successful NGO tailored its mobilization strategies toward normative legitimacy, in order to gain the perception of "appropriateness" of its challenge by the wider society. The unsuccessful NGO tailored its strategies toward regulative legitimacy, marshalling political and legal support in order to countervail the immediate threat from the public agency carrying out the development.

Consistent with an explanation building research design, the study is qualitative (Yin, 2003), comparing the two cases through a detailed analysis of archival data obtained from a computerized newspaper abstracts database. Information was also collected from key NGO activists, which engaged in the two cases of confrontation.

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17. Spatial Planning: a public obligation or a private venture? A Greek approach towards balancing the issues.

???Dr Konstantinos Lalenis

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Spatial Planning is referred to in the Greek Constitution as a right and an obligation of the State. This is also reflected in a general impression in the public, according to which, the Greek State monopolizes planning by right and tradition. Nevertheless, involvement of private sector in planning was recorded since the middle of 19th century, although through rather unorthodox and unofficial ways. This continued to be the case until late 60s, when the urbanization trends became particularly strong and hard to manage. The uncontrolled growth of Greek cities, the increase of the phenomenon of illegal constructions and settlements, and the downgrading of quality of urban life necessitated a modernization of planning policies and implementations and a rationalization of private involvement in spatial development. Since then, successive laws were introduced, aiming to provide an organized institutional framework, within which, private sector engagement could be encouraged. Legal provisions for the preparation of spatial plans by private agents were considered as a significant incentive for this engagement. In general, what was attempted was to combine the main objectives of private agents, which were to invest and profit, with the objectives of organizations of a more social character (housing cooperatives etc.), which were to satisfy residential needs for specific social groups. And all the above in a such a way as to overcome the inability of the state to formulate a sound housing policy, and the inability of local administration to finance housing projects and spatial development.

The proposed presentation examines the historical evolution of private sector initiatives in planning in Greece, within a general context of political and social conditions. The historical review is followed by an analysis of the recent relative legislative frameworks. Laws and policies are analyzed in conjunction to the concurrent social and political conditions in the country, as well as to the international trends towards globalization, increased influence of private sector in global affairs, and restrictions in the role and authority of national states. Finally, implementations of spatial development of this type are described and assessed, in terms of conformance to the initial goals and objectives of the initiators, alleviation of housing needs, efficiency, accordance to planning guidelines, regulations and principles set by the

strategic plans of the area (Regional Plans, Master Plans, General Development Plans of the Municipality etc.). Implementations are also evaluated in relation to indirect outcomes such as eradicating excessive bureaucratic procedures, reducing phenomena of political clientelism and social inequalities etc.

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18. A Local Spatial Policy and the Needs for an Active Management of the Communal Properties

Grzegorz A. Buczek

A **Study on the Conditions and Directions of Spatial Development [Study]** is the most important and **obligatory planning document** of each Polish community/municipality. According to the Act on Spatial Planning and Development the local self-government authorities should define their **local spatial policies** preparing and adopting such a Study and review them at least once during their four years term. Among the principles according to which Polish spatial planning should be executed are "the spatial economic values" and "the ownership rights." The local "conditions" which have to be observed while preparing a Study is "**a legal state of the lands**". The local "directions" which should be set up while adopting a Study are "**the planned changes in land use**", "**development of the systems of communal networks**" and many other factors which may create a serious impact on the performance of the various players on the local property markets. As the spatial planning process in Poland is open to public monitoring and some "interventions", such players – private ones in particular - are able to undertake **the decisions on purchases of the selected properties** earlier then the final decision on the local spatial policy (or its changes) is adopted by a local communal council. Such situation often creates serious **problems for the local communities in an implementation of some planning and development decisions**, such ones as construction of public roads, schools etc. An active implementation of a **land management policy** is then a must for the local communities which want to be effective in reaching the quality and material aims of their spatial policies. Such active approach is rare in Poland, as the communities rather sell the publicly owned properties then buy **the lands for the future public developments**, early enough **to avoid the speculations** based on a growth of value of the lands generated by their own planning activities.

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19. Urban land re-development problems in Estonia: a case study of a re-development an industrial area in town Tartu

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Abstract

The attitudes of Estonian people to the land have been changed since gaining independence and the re-establishment private ownership in land. However, the essence of the private ownership in land is been not always fully understood by different parties of land management and land development, including re-development. It concerns civil servants in state and municipal authorities on the one hand and the landowners on the other hand. There is scarcity of expertise and necessary experience about the land use planning and the property rights in many Estonian state and local authorities. The landowners presume quite often that they can do with the land what they want – they are owners and they think that their right should prevail over the rights of other parties. The main goal of many landowners is to get maximum profit and the sustainable and balanced development is been put to the backstage.

The aim of the paper is to find out and to analyse the possible contradictions and conflicts of interests of different groups and stakeholders in the process of the re-development. The analysis is been carried out as a case study. A relatively small (about six hectares) re-development area in the Estonian town Tartu is been investigated. The study area is relatively close to the centre of the town today but it was not the case about 50 years ago. The town was smaller and this area was the outskirt at that time. Many enterprises are moving away from this place today and there is obvious need for the re-development of the area. However, not all industrial enterprises are interested in to move away from this area and this is the reason for some conflicts of interests. It was expedient place for the industry about 50 years ago but this is not so today. The area is close to the river and this is one of the sources for the conflicts of interest of different parties.

The case study focuses to the following aspects of the development and planning:

- Analysis and comparison of the attitudes and interest of different stakeholders (town government, landowners, neighbours and other third parties)

- The changes of ownership rights in land in the re-development area;
- The analysis of the different aspects of the planning process and the drawbacks that appeared in this process.

The results of study are showing the status of the planning and the land development activities in Estonia at present. The weak points of land management have been pointed out.

20. Planning Regulations and Social exclusion from residential areas

Iris Frankel-Cohen[1] & Rachelle Alterman

The exclusion of certain individuals or groups from residential areas is a well- known phenomenon, which influences both the demographic space and social cohesion. We would like to focus on a "hidden" factor concerning exclusion - planning regulations and the legal and public-policy dilemmas they present. We will argue that the role of planning regulation (and the legal basis on which it stands) can either intensify the phenomenon of residential exclusion or reduce it. The way and the extent this instrument will be used is influenced by the social, economic and political circumstance in each locality and in each country. Our argument is based on a literature review concerning this issue in U.S.A., Britain and Israel. This review is the first stage in a larger research project intended to compare the laws and policies about the exclusionary planning regulation in selected countries.

Exclusion from residential areas is a process which leads to displacement of the "other", usually socially or politically disadvantaged, from certain housing areas – residential complex, neighborhoods or even entire local authorities. One of the elusive – and in many countries, as yet unspoken - ways to do so is through land use regulation and development control.

In most countries, planning regulation is a statutory instrument which perceived as a technical tool. In practice, planning regulation can change, indirectly, the residential composition and influence exclusion from housing as well. As a generic tool, planning regulations can be used both as a tool to intensify exclusion from housing or as means to reduce it. For example, low density and large size housing units will probably attract wealthy residents. These units will be out of reach for low income groups. Regulation of fair housing might enable some of these low income residents to live in a middle or higher-income areas.

In this paper, we examine and compare current knowledge about this duality of planning regulations - exclusion or inclusion. We examine the academic literature, legislation and court decisions in three countries: the U.S.A., Britain and Israel. These countries differ in their legal planning systems and their political structure, yet, in all three, planning regulations can potentially be used in similar ways.

Our findings show that these countries differ significantly in the manifestation of exclusion from residential areas as well as in the degree to which exclusion has become a topic for judicial review and for legal research. In the USA, many, if not most, residential areas are quite uniform in the class of income and, as consequence - in their ethnic composition. The role of the planning regulation in this context has become a topic for considerable academic writing and some court decisions (These, however, have had little bearing "on the ground"). In the UK, exclusion through planning regulation has not surfaced as a topic of discussion or of legal analysis. This does not mean that there are no neighborhoods in the UK which are uniquely for high income or low-income residents. Perhaps the absence of discussion of this topic reflects the strength of the current policies to encourage and enforce mixed-income areas.

Israel seems to be mid-way between these two countries: Its history was of considerable mixed-income residential areas. In recent years, this has been changing. The topic of exclusion through planning regulation has only recently reached the awareness of some mayors and legislators, but we hypothesize that it will soon become a topic for greater discussion in Israel.

[1]Iris Frankel-Cohen is a lawyer and a Ph.D. student at the Graduate Program in Urban and Regional Planning at the Technion – Israel Institute of Technology. Professor Rachelle Alterman, a planner and lawyer, is her supervisor.

21. The relationship between land use planning and compulsory acquisition

Nira Orni

While exploring and studying compulsory purchase for my dissertation, I discerned a certain dilemma which creates tension between planning and property rights, a dilemma which I would like to explore further in my research.

Planning deals with the future, and to prepare well for the future - planning has to be long range. Land use planning involves designation of land for public purposes, which eventually will have to be purchased compulsorily when needed. The interest of the planners, representing the public interest, is to designate the needed land for public purposes at an early stage and to secure the possibility to acquire it when the need arises. Given unlimited resources, the planners would prefer the acquisition to be at an early stage too, but this is seldom the case.

This situation, of delayed acquisition of land designated for compulsory purchase, might leave landowners in a state of uncertainty for the period between the designation and the acquisition. Land owners and the real estate market need stability and security. From the point of view of property rights, compulsory purchase should be a tool used frugally, only when urgently needed, only when the specific purpose, location and amount of land is known and only when the budget for the compensation is ready. The conflict between the planners` interest and the land owners` interest creates the dilemma.

For my research I will need to study and compare the legislation and practice of planning and compulsory purchase in several countries, concentrating on that dilemma. The foreseen parameters for comparison would be: The duration of time between designation and acquisition and its consequences, the transferability of the land in the meantime, the affect on land values, the manner and considerations for the selection of designated land and the accuracy of it, the possibility of changes of planning and designation during that period, the degree of the rigidity of the designation.

Finally, I would like to find and suggest a pattern for compulsory purchase which will solve or diminish the dilemma. In my presentation I would like to get responses from my colleagues considering the dilemma and suggestions for solutions.

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22. Oil Production and Land-Use Patterns in Nigeria – The Need for Planning Intervention.

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Key words: Oil pipelines; land value, land-use planning, post-construction, pre-construction, impact assessment, Niger Delta

Abstract

This paper addresses the impact of oil production infrastructure on the future development of land-use patterns in oil producing communities and suggests the need for pre-construction and post-construction planning intervention. The decision on oil pipeline routes and the accompanying location access roads are usually based on cost benefit analysis in terms of the project itself. The likely interference of these infrastructures with the future land-use pattern is not usually part of an impact assessment study in oil production. This may be attributed to the silent assumption that community landed property traversed by oil production infrastructure will remain farmland in perpetuity. This is a misleading assumption which has been proven in oil producing communities all over the world because the mere presence of the oil production activities is a catalyst for development to which communities respond. Nigeria is no exception with cities like Warri in Delta State and Port Harcourt in Rivers State which have literarily burst at the seams expanding rapidly into the suburbs in the last three decades. Pre-construction land-use planning intervention should form part of impact assessment studies. It should appraise future land-use potentials of the general area and ensure that oil production infrastructure is constructed in such a manner that it makes for sustainable development of the area in the future. However, in the absence of pre-construction land-use planning which is the situation in the Niger Delta region, post-construction impact on land-use patterns can be assessed and recommendations made for post-construction land-use planning intervention to release the land value potentials of communities transiting from rural to semi-urban. A case study of oil producing communities close to the sprawling urban city of Port Harcourt in dire need of post-construction land-use planning intervention is examined.

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23. Zoning for Able-Bodiedness: Dispersal Bylaws as a Form of Social Regulation of Disabled Persons in Ontario, Canada

Lilith Finkler

As a result of deinstitutionalization and the promotion of integration, disabled persons now live in the "community". Many disabled persons reside in "group homes", houses administered by social service organizations or for profit operators. The author contacted planners in every city in the province of Ontario, Canada and determined that 77% of cities restrict group homes' location by enacting dispersal bylaws.

Dispersal bylaws dictate the location of group homes by stipulating a minimum separation distance requirement. Group homes must be a specified minimum distance apart. If group homes are deemed too close, the second proposed home cannot be established at the desired location.

This paper examines an appeal at an administrative tribunal adjudicating land use disputes. A private operator challenged the application of dispersal bylaws to his group home. The case study revealed that disabled tenants considered the group home a home in contrast to opponents who viewed group homes as "institutions". While dispersal bylaws can be characterized as part of the Not In My Back Yard (NIMBY) continuum, a disability centred perspective reveals alternative interpretations.

The author argues that the disparate views of group home tenants and their opponents reflect and reinforce the ideological tensions underpinning locational restrictions. Dispersal bylaws constitute a form of zoning for ablebodiedness, emphasizing social constructions of disabled persons as undesirable neighbours. Municipalities justify the enactment of bylaws, arguing that the separation of group homes enhances "community integration". An examination of the academic literature suggests the opposite. In fact, dispersal bylaws implemented by municipalities may limit numbers of group homes, increase visual buffering between group homes and neighbours, disrupt friendships among disabled individuals living in different homes and ultimately, facilitate gentrification. Zoning restrictions, therefore, function as a form of social regulation, limiting the presence of disabled persons.

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24. The contracting government

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The mutual interaction between planning and law is strong. However both fields have quite contrasting roots and different purposes. Currently, after the transformation of government to governance which resulted in border crossing of state and market, jurisdictional territories and Euclidian space, both planning and law have got a pragmatic and instrumental role, neglecting the contrast between them. This resulted in new dominance of horizontal strategies of co-production, embedded in direct and contractual sense of mutual goal rationality and instrumentalism. This might have consequences for guaranteeing the institutional quality of law.

Planning authorities in the Western World are increasingly using contracts as an instrument to achieve planning goals. This trend has at least two causes. The first is the decrease of powers of governments that have privatised many of state-entities. This forces them to contract with private parties for services they used to deliver themselves. A second cause is the attractiveness of the contract over public law regulation because of the refinement and specificity of the contractual instrument that offers more opportunities to create a problem-fit solution. A contract thus fits the concept of responsive law (Selznick, 1969) whereby law is no longer an independent authoritative source, nor does the rule of law block political solutions, but rather tries to respond to and facilitate the needs of society.

However, the use of contracts has its downsides. Recent experiences in the Netherlands whereby mayor infrastructure projects were publicly procured are now commonly regarded as failures. In the paper we will use the Dutch case of the procurement procedure of the High Speed Rail (HSL) as an example of the contracting government and argue that the problem of role integrity (Macneil, 1980) can be used to illustrate what went wrong in this case. We will further use the case to discuss the threats and opportunities contracts offer as a way to achieve planning goals and argue that contracts can be used as a regulative instrument (Collins, 1999) when they are properly used, taking into account the public internal conflicts between the dominium and imperium.

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25. The Effect of Title Deeds on Land Market in Minna Informal Settlements, Nigeria

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Abstract

Title or secure tenure can create wealth from even the poorest home (De Soto, 2000) therefore, for property to create capital there must be a recognized system such as title deeds to represent it. The need for the study became very paramount following the emergent trend in scrambling for land ownership in Minna consequently, the study revealed the followings: Lack of legal access to land ownership resulting from long delays in allocation system, payments of compensation and insecurity; no title with which to develop property market; and, no potential for wealth creation. It was recommended that provisional title be provided immediately to ensure empowerment and to meet the MDGs goals in developing countries such as Nigeria.

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26. The Public Interest in Planning in Japanese Jurisprudence: The Limits to Participatory Democracy

Dr. Kuniko Shibata

The concept of the public interest was once considered as the most important value for planning professionals. Nevertheless, from the late 1960s onwards, feminists, postmodernists, multiculturalists and social campaigners have fiercely criticised the ideologies of the public interest as legitimising top-down policy decisions made by the technocratic elite. In order to make planning strategies more accountable to citizens, policy-makers, academics and citizens now increasingly assert 'public participation' in a planning decision-making process. Lately, government reports as well as mainstream academic literature tend to emphasise that 'deliberative democracy' led by active civil society is a key to materialise the public interest in planning policy-making.

However, while open civil society has been no doubt the source of democratic movements and planning progress in the history of the West, the existence of civil society itself did not necessarily produce fair planning outcomes in the late-developed democracies. This paper proposes that the statutory framework as well as the fair judicial system needs to underpin the ideal of the public interest in planning development, in particular in late developed democracies where the rule of law principle is not firmly established. The legal cases analysed in this paper well illustrate why citizen participation failed to change value or practices in Japanese planning, even in recent years. The Japanese court dismissed local autonomy of planning and rejected any legal entitlements of third parties in development. The paper demonstrates how the hierarchy of law such as the statutory power between central and local government and the separation of power between the executive and judicial branches has essentially defined the idea of the public interest in Japanese planning. The paper concludes why democracy cannot be achieved only through participation; it should be endorsed by the right to challenge to the government through fair legal procedure as Robert A. Dahl claims in his 'Polyarchy'.

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27. The Analysis of Korea's Planning and Development Regulations: the Perspective of Transaction Cost Economics

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Discussion of land use and development control is in large part based on Pigouvian welfare economics, which uses the concept of market failure to account for public intervention in real estate development. The welfare economist view states that failures in perfect markets, which include externalities, public goods and asymmetrical information, prevent an efficient distribution of resources, referred more often to the Pareto optimal (Harrison, 1977; Heikkila, 2000; Buitelaar, 2004). According to this view, government intervention under the presence of market failure will make a redistribution of resources, removing the loss of inefficiency, and finally lead to the Pareto optimum.

The Pigouvian welfare economist view is valid in an ideal situation where property rights are perfectly and costlessly specified and information is likewise costless to acquire (North, 1990). Land use planning and urban development, a form of government intervention into private property markets, can be regarded as a process of defining and allocating property rights. However, it is noted that specifying property rights is not carried out without friction. In reality, substantial transaction costs are incurred in the course of planning and development. Then, the assumption of costless and frictionless government intervention, on which the market failure view is based, is not acceptable, both theoretically and practically. Therefore, it is contended that the process of land use planning and development control provokes various kinds of transaction cost. This point indicates that the planning and development process can be treated from a transaction-cost perspective.

Then, the transaction-cost view of planning treats the planning and development process as a process of coordination as analyzed in general terms in institutional economics (Alexander, 1992). Under the transaction-cost view, the urban planning and development process can be regarded as a sort of production process: at a particular location, the built environment is changed and/or created. Transaction costs refer to all costs other than the costs of physical production. Then, the critical attributes of a transaction include interdependence, uncertainty and duration (Alexander, 2001b). To the degree that a transaction has these characteristics, the actors may be exposed to various hazards: opportunism, e.g. one party to a contract exploiting the other's dependence or his own superior information; or moral hazard, e.g. an agent's accepting unwarranted risks that are divorced from responsibility (Williamson, 1999: Alexander, 2001a, 2001b).

Under the critical attributes of transactions, i.e. interdependence, uncertainty and duration, the agents who have stakes in the urban development process engage in the transaction-cost economizing behavior, making an effort to reduce the risk of opportunism and moral hazard. In this sense, the current institutions under which urban development activities are carried out can be regarded as the rules of the game, or more formally, the humanly devised constraints that shape interactions and transactions in the development process. Then, the transaction costs in planning might be interpreted as the institutional costs, which are the costs of creating and using institutions in development process. Reducing these costs would increase the process efficiency of the development process in which they function. Then, it can be argued that from the standpoint of transaction cost economics, a primary goal of public institutions is to eliminate the transaction costs occurring in the planning and development process, even though not completely but to a maximum extent. The general assumption behind this argument is that the regulatory approach to planning and development, which is based on Pigouvian welfare economics, does not provide an adequate institution for the efficient allocation of resources.

In Korea, various forms of institutional devices, including statutory laws and court decisions, have been established to regulate land use planning and development. Borrowing the transaction cost economics terminology, we can call them the governance structure or alliance as applied to urban planning and development controls. They may be categorized into third party governance and bilateral governance (Alexander 2001a, 2001b), or alternatively a market type, a hierarchical type and the network model of coordination Buitelaar (2004). Regarding Korea's planning institutions, it is noted that they have been designed based primary on the welfare economics tradition, by which government interventions are assumed to be faultless and perfect, raising no transaction costs in the process of regulation. But, as the view of perfect government proves to be invalid, a significant level of transaction costs should occur in the implementation of various planning tools, thus impeding the achievement of economic efficiency in planning.

This proposed paper aims to analyze selected planning tools that are incorporated into Korea's planning system from the institutional economics, especially focusing on the perspective of transaction cost economics. Then, the key research questions include what are the prime purposes of the planning and development regulation tools, how they are effective in achieving the stated goals, and finally, what kinds of institutional design are suggested to reduce the transaction costs that impede the maximum attainment of the goals. Within the framework of transaction costs economics, the proposed paper will devote to identifying transaction costs, which occurs in the planning and development process in Korea, and based on the findings, whereby providing insights for better institutional design regarding urban planning and development.

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28. Urban Design Interventions in Israel - Discrediting the Discretion of a Local Planning Authority

Nir Y. Mualam

Abstract

Design is a matter of taste, of applying shared values, of constant balancing between allegedly conflicting ideas and goals: form vs. function, local needs vs. global values, individual vs. public expression, preservation vs. modernity, property rights vs. social communal rights, public domain vs. private domain, budget constraints vs. public aspirations for a built environment of higher quality. Sometimes those conflicts are solved or mitigated, yet at times they are demonstrated in a manner that calls for intervention by a judicial or a semi-judicial higher authority representing "The Leviathan": This adjudicator has to review the design, layout, and architectural quality of the proposed projects, within the legal framework and constitutional climate in which such an adjudicator performs. By doing so, it has to discredit or reinforce the discretion of the local planning authority which authorized the initial proposed works.

When a local planning authority wishes to grant a planning permit or authorize a blueprint, a plan or a design brief, such an administrative act could be challenged by a person or by an organization who perceives it as harmful. When such challenge is raised, the planning initiative will be inspected by the aforementioned adjudicator.

When the local planning initiative applies design standards, or implements a proposal which has a certain aesthetic effect on the area involved, a question arises: Is the judicial or semi-judicial authority authorized to intervene? Should it amend or replace the initial-local design proposal with its own perception of an adequate design?

The discussion will circle around the subtle relationship between a local planning authority and a higher hierarchy planning body which examines the proposed projects. Several major questions arise in that matter, some of which include: Do judicial \ semi-judicial bodies have the legal power to intervene in design-based planning decisions? Are they well equipped to

deal with design based decisions? Should they interfere? If so, what are the design-based planning decisions more susceptible for intervention? Further, what are the motives of such an intervention? Do conflicting goals, if any, change the outcome of a design review process?

Our Discussion, fortified by illustrations, diagrams and photographs, will examine one of the major design debates the city of Tel Aviv has known in recent years – The Mann auditorium renovation plans. Through this prominent case study, we will demonstrate some of the dilemmas of applying design standards by a semi-judicial, upper hierarchy planning body. The case of Mann auditorium is a preamble, a first of many which will be examined in our forthcoming research. This research is aimed at exploring & epitomizing the legal and local planning regulation aspects of design interventions and review, made by upper hierarchy planning authorities. We shall adopt a cross-national comparative perspective.

By Nir Y. Mualam – Ph.D. candidate – Technion - IIT
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29. Transborder planning document and its role in respective planning systems – the case of "Polish-Czech Border Region Development Study"

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Accession to the European Union, on the 1 May 2004, have set a new opportunities and new challenges to spatial development of border regions of the "new countries", which have become the EU's internal regions. This shift from the role of a peripheral areas to a much more engaged ones have brought about a change in goals and strategies for development of border regions.

To fasten technical and socio-economic stabilization and better development of the Polish border regions, joint planning activities with neighbouring countries have been initiated, aiming at formulating common spatial planning documents. The incorporation of such documents into the spatial planning systems of the two respective countries can be guaranteed only by agreement with the methodology adopted and by participation and positive assessment of the spatial planning authorities on both sides of the border.

The paper will present the method applied for elaboration of "Polish-Czech Border Region Development Study" completed in 2006. This "Study", has been the first joint planning document prepared for one of the seventh Polish border regions. During its preparation it was necessary to resolve methodological dissimilarities and certain differences between approaches to planning in Poland and the Czech Republic which will be discussed in the paper. It will also review the role and position of this document in planning systems of both countries and ways (if any!) of its implementation.

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30. Land Management by Insurances
Large Areas for Temporary Emergency Retention

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Currently, we experience a changing climate, which leads to more extreme floods in the future. In addition, the floodplains are used very intensive. Floods and men claim the same space. Therefore, coping with extreme floods is a spatial challenge.

Concept of LATER

This research pursues the spatial concept of reducing the damage of extreme flood-events inundating less valuable areas to protect the more valuable sites. This spatial approach requires suitable land. Namely, the areas have to be large enough to retain huge amounts of water, they have to be allocated meaningfully, they are a temporary land use, they have to be inundatable with less damage in cases of emergency, and finally, they have to be hydraulically suitable for retention. To implement such a concept of Large Areas for Temporary Emergency flood-Retention (LATER) land management has to make these areas available.

Four approaches fail: planning, market, commons, or fate

How should land for such a specific purpose been made available? In principle, four different approaches exist – derived from Cultural Theory: planning, market, commons, and fate. Planning regulates land uses by strict rules and orders. However, in the case of LATER the landowners could neglect it because they perceive planning as repressing. The market, boldly used, offers profitable opportunities for land management. On the other side, it runs the risk of being ruthless and producing social hardships. The more socially oriented approach would be land management, based on commons, but commons have not only an including but also an excluding aspect. Thus, it would be neglect by the excluded. Finally, if none of the others works, fate can be a reaction to spatial requirements in the area of conflict between different approaches. Just by being calmly and waiting for things to happen, avoids conflicts. However, such a resigned behavior would not lead to efficient results. But can any of these four approaches make LATER available?

A viable combination is essential

Each of the four approaches has its advantages and disadvantages. What is needed is an approach that contains the advantages but avoids the disadvantages. Thus, a combination of planning aspects with market mechanisms, including solutions based on commons, and simultaneous relying on fate is essential. This combination has to be viable, which means it has to make LATER available.

Coming up...

In the full paper, such a viable combination, based on insurances, will be discussed. It is the provisional result of my PhD, which will be finished in 2008.

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31. Property Rights, Responsibilities and Values: The U.S. Regulatory Takings Doctrine and Implications for Planning Practice

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Abstract:

In 1922, the U.S. Supreme Court first articulated its "regulatory takings" doctrine, holding that "[t]he general rule at least is, that while property may be regulated to a certain extent, if the regulation goes too far it will be recognized as a taking" (Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 415 (1922)). Since then, the perplexing question has been: what does it mean to "go too far"? The Court has addressed this question over the past several decades through a handful of key decisions, several of which have provided some bright-line clarity through categorical rules. Even so, the vast majority of regulatory takings claims are adjudicated today under the Court's fact-specific ad hoc balancing test, and many if not most of those decisions have rejected property owners' claims. So while the very existence of the regulatory takings doctrine itself seems to favor private property rights, the outcomes of adjudication under the doctrine in practice tend to favor the uncompensated regulation of private property. The theoretical underpinnings of the doctrine, and its implications for planning theory and practice, thus remain unclear, debatable, and contentious.

In this paper I first review the history of the regulatory takings doctrine and the tensions inherent within it from its very inception. I then reframe the doctrine conceptually using contemporary schools of thought on rights and responsibilities and on the multi-dimensional and incommensurable values of land. Finally I discuss implications for planning practice given that reframed perspective. I argue that despite the Court's assertion that a regulatory takings analysis is distinct from and subsequent to a due process analysis, it is impossible to assess whether the burden of a regulation on a given property owner is unjust without considering two things: first, the reasonableness of the property owner's expectations, which implicates that owners' responsibilities as a counterbalance to his or her property rights; and second the fairness of the governmental regulation in a substantive due process sense, which requires contemplating the multi-dimensional values of land and the corresponding purposes for legitimate governmental action. Achieving coherence in planning

practice in order to provide coherence to the regulatory takings doctrine thus requires paying much closer attention than is typically given to the reasonableness a given land use regulation and the purposes for which it is imposed.

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32. ANCIENT PROPERTY RIGHTS: DISPOSSESSION AND COMPENSATION

John Sheehan[1]

ABSTRACT

The assessment of compensation has always exposed the multifarious issues which can emerge as the heads of compensation arising from acquisition or impairment of a property right by the State, notably land property. With separate property rights now extending to not only land and minerals, but also water and biota, carbon credits, saline credits, transferable development rights, and even electro magnetic spectrum, settled compensation law and practice are revealing their shortcomings. The recognition of ancient indigenous property rights in 1992 by the High Court of Australia has raised questions about the ability of compensation law and practice to adequately deal with issues such as spiritual and cultural attachment which are an integral part of Aboriginal rights and interests, and also the propriety of land use regulations in this context.

The methodological discourse between property, law and expectations of the community is examined in the light of the aims of compensation. The ability of current practice and theory to achieve just goals of compensation is reviewed. While many in the Australian community are calling for a transparent set of outcomes to provide precedents for the future, the likelihood of current attempts at compensation to achieve robust justice is found questionable. Directions for future efforts towards resolution of this problem are suggested including issues at the heart of property, legal theory and land use regulation. To attempt a solution without dealing with all of these is argued to risk perpetuating the problem.

KEYWORDS

Compensation, native title, property rights, property theory.

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33. Land Reform in South Africa

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Abstract:

The commission on the restitution of land rights in South Africa is mandated in terms of the constitution of 1996 to provide for the restitution of rights in land in respect of which persons or communities were dispossessed under or for the purpose of furthering the objects of any racially based discriminatory law. The Department of Land Affairs therefore, makes use of redistribution, restitution and tenure reform to meet the above vision. The Department of Land Affairs has reviewed their strategic objectives to be in line with the objectives of national government. Some of the core objectives are as follows:

- Provision of tenure security that creates socio-economic opportunities for people living and working on commercial farms and in communal areas,
- Redistribution of 30% of previously white-owned agricultural land by 2014 for sustainable agricultural development, and
- Settlement of all outstanding land claims by 2008 and implementation of restitution awards.

The total landmass of South Africa is approximately 120 million hectares. 84 Million hectares thereof constitute prime, white owned agricultural land. In terms of the above objective 22 million hectares (30%) should be delivered to dispossessed communities by 2014.

The land distribution programme took of slowly, but gained momentum and approximately 3.7 million hectares of land have so far been transferred for the restitution of land rights from implementation of the programmes in 1994 to end of January 2006, with the outstanding balance to be finalised by end 2014. The deadline for land restitution has been set for March 2008, whereas land distribution and tenure reform programmes will continue as an ongoing process. The restitution programme will not be extended - the objective is to finalise the process before March 2008 – but in all probability this deadline will not be met, looking at current performance.

The purpose of this paper is to investigate and report on the successes and failures of the land restitution, distribution and tenure reform programmes according to the aims of the Department of Land Affairs in terms of the Restitution Act no.22.

Keywords – Restitution, Redistribution, Land Rights, Expropriation, Tenure Reform

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34. The Costs of Land in the New Dutch Land Development Act: A Critical Review

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Abstract

A new system for development contributions will be introduced in the Netherlands in 2008. The basic idea behind this Act is that local government can more easily force developers to contribute to the development costs. In present practice, most landowners do pay such contributions 'voluntarily', that is, local authorities do not change the local land use plan (*bestemmingsplan*) if this plan is not financially feasible. However, if a small group of landowners behave as free riders, there is no satisfactory big stick to let them contribute. Therefore, the decision has been taken to launch the possibility of a charge for infrastructure provision at the moment a building permit is issued.

The charge will be based on a so-called *exploitatieplan*, that is a plan that estimates all costs for the development of the land in the area concerned, and that allocates these costs taking prospected revenues into account. This *exploitatieplan* is compulsory if the development contributions are not otherwise provided for, that is, if there are no agreements or the local authority does not own the land. The charge a landowner has to pay be will be reduced with the costs that landowners have already made. Hereby the estimated costs will be taken into account (which are not necessarily the real costs).

One of the costs to estimate in the *exploitatieplan* is the cost of the (as if) acquisition of land. The Act states that the way to estimate these costs is to determine the full market value, and points to the provisions of the Expropriation Act. For profitable development areas, such as greenfields, this value is based on the proposed land use, and not on the present land use.

It seems to make the *exploitatieplan* unnecessary complex to charge this residual value upfront as costs of land, because in practice the land will not be transferred to the government. And in mixed development areas in which the full market value will be partly based on the

present land use (for example already built-up area) and in another parts of the area the future land use, the system becomes even more complex.

In the paper, we discuss the way the costs of land are taken into account in the new system and the possible disadvantages of the chosen method. Two alternatives method are introduced, and compared in a dynamic context of land development planning.

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35. Public participation in Chinese Planning: review and prospective

Mr. Xiaochun JIN & Dr. Li YU

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Abstract

Chinese public participation in planning only started in last few years. The first theoretical research was at the beginning of the 1990s. The earliest participation started in the late 1990s. It was after the year of 2003 that there have been more researches and practices of public participation in planning in China.

This paper analyses the public participation in planning process after the year of 2003 in China. It is found that there are several reasons to stimulate participation in decision making by the public. Economic development and improvement of legislation are the two main ones. The Chinese rapid economic development creates large amount of urban construction. Contradictions and social conflicts are becoming main social issues as a consequence. It is typically illustrated in the procedure of compulsory purchase of land and resettlement of residents. The interests of local residents have been ignored and damaged. However, the increasing income of Chinese people promotes the awareness of democracy. Normal residents are more active to participate in policy and plan making to protect their own interests. The promulgation of "Administrative License Act" and "Property Act" makes Chinese people to protect their own rights. The Acts also encourages public participation in planning.

However, there are still many problems in public participation in urban planning process. The existing Urban Planning Act has not clearly defined the participation and its action in planning process. Even the "Methods of Urban Plans Formulation", which was issued in 2006 only mentioned briefly the public participation in principle. There is very little research in theory and methods of participation concerning the Chinese characteristics. More critical, education of public participation is in serious shortage.

Through review and analyse of research projects of public participation, e.g., “Basic Date System of Urban Public Participation”, “System of Public Participation in Urban Planning based on WEB-GIS”, and the “Urban and Rural Planning Act” that is implemented from January 2008 and introduces public participation in planning act first time in China, this paper recommends approaches and methods to further promote public participation in Chinese planning.

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36. Land readjustment for value capturing: a new planning tool for urban redevelopment

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Key words
Real estate development, value capturing, scoping, urban land readjustment

Abstract
Many urban redevelopment projects include expensive infrastructural works. In order to find funds for that infrastructure development, Dutch city planners are increasingly looking for opportunities for 'value capturing' from related property development. The argument is: investment in new infrastructure improves the accessibility of the locations that are connected to this infrastructure, with the result that property values in those locations increase. For that reason, municipalities negotiate with property owners and developers to get them to finance part of the infrastructure costs. This takes place in redevelopment projects around stations, thus linking public development of infrastructure to private development of property. However, the available legal instruments are not effective. This paper explores a new legal instrument, namely urban land readjustment combined with improved 'scoping' of the plan. The argument is supported by estimates of the potential extra property value in station areas resulting from public infrastructure investment. We argue that such a legal instrument, which is already in use in some countries, may be a valuable new planning tool in the Netherlands and elsewhere.

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37. Spatial planning, the allocation of land and undesired outcomes of property development: looking for the right planning approach

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Abstract

By allocating land for future development, spatial planning influences, by definition, the functioning of / developments on land and property markets. Sometimes, the amount of land that is allocated for certain developments results in undesired effects on the outcome of property development processes. For instance, a shortage of land for housing development can be responsible for a shortage in housing production (references) or the oversupply of industrial land can lead to inefficiency in the market for industrial estates (Van der Krabben and Buitelaar, 2007; Louw et al., 2007). Intraregional competition between different municipalities and the absence of regional policy for office developments lead to high vacancy rates on the office market (Janssen-Jansen, 2007). Additional restrictions to land that is allocated for peripheral retail development (regarding the retail sectors and the size of retail units to be allowed) lead to suboptimal outcomes for peripheral retail locations (Van der Krabben, 2007). Due to typical aspects of the Dutch planning system those developments cannot be prevented easily. Remarkably, in the Netherlands at present those undesired effects – though of different nature – do take place in the four most important segments of the property market (housing market, office market, retail market and industrial estates market). We argue in this paper that spatial planning decisions – the selected type of interventions – can be held responsible for an undesired shortage of housing production on the one hand and the undesired oversupply of office space, retail space and industrial estates on the other hand. Additional government interventions are now necessary (and implemented) in all those segments – either by introducing new planning legislation or by implementing new policy plans - to 'solve' the problems. These additional government interventions are usually based on 'traditional' regulatory approaches to planning (Needham, 2006). This calls into question whether the undesired market developments could have been prevented by an alternative, more market-oriented spatial planning approach. We make use of property rights theory to

discuss, with respect to the four market segments in the Netherlands, the advantages of a planning system based on *market structuring* instead of traditional *regulatory approaches* to planning.

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38. Private Tree Protection By-laws in Canada: Some Observations and a Property Rights Analysis

Eran S. Kaplinsky

This paper focuses on municipal bylaws restricting the power of private landowners to harm or destroy trees located on their own property. Private tree protection by-laws have become more common in recent years in response to citizens' demands as well as lobbying efforts from tree advocates and other environmental groups. According to published citizen guides and other explanatory material accompanying such bylaws, private trees are, collectively, an important part of the `urban forest', and bylaws protecting them are desirable environmental measures that also serve planning and economic objectives.

Building on the analytic framework developed by the property rights school, the first part of the paper posits that private tree protection bylaws are better understood as a particular form of land use regulation, which they resemble in substance, if not in form. Land use regulations were first advanced as legitimate means to advance public health, safety, and general welfare, but their critics have repeatedly demonstrated the tenuousness of this link in practice. Like other land use controls (notably zoning), private tree protections can be explained as an attempt to use regulation to collectivize the rights of private homeowners in order to protect the character of existing neighbourhoods. The term `urban forest' is the rhetorical device by which rights over private trees are transferred to the community. In homogenous neighborhoods, the restrictions can be justified, if each homeowner is assumed to gain more from the protection of their neighbors' trees than they lose from the loss of rights over their own trees.

The second part of the paper puts the property rights analysis to the test by taking a close look at private tree protection bylaws adopted in five of Canada's ten most populous cities (Toronto, Montreal, Mississauga, Vancouver, and Hamilton). The analysis reveals significant gaps between the operation of their bylaws and their putative goals. More specifically, the analysis suggests that environmental concerns do not provide strong support for the particular set of imposed restrictions. The analysis further suggests that the preservation of neighbourhood character is a more plausible objective of these regulations.

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39. TO A QUESTION ABOUT THE SYSTEM OF LEGAL NORMS OF STATE ADMINISTRATION THE LAND FUND IN UKRAINE

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The Ukrainian land legislation is on the stage of development and does not contain legal norms which determine all sides of state administration the land fund particularly; as a result there is a necessity to define the system of legal norms of state administration the land fund in the land law of Ukraine.

The conducted research allowed us to ground the row of positions according to this question. Firstly, the legal norms of state administration the land fund form such legal institutes: planning of the land using; organization of the land using; state control over land use; monitoring of earth; state land cadastre; standardization and setting the norms in the sphere of earth guard etc.

Secondly, classification of these institutes can be conducted after the row of criteria, in particular: depending on the circle of public relations which law norms settle there are legal institutes of planning of the land using; organization of the land using; state control over land use; monitoring of earth; state land cadastre; standardization and setting the norms in the sphere of earth guard etc.; depending on that, whether legal norms settle the concrete type of public relations or whether they settle the separate circles of particular public relations - subject and functional legal institutes; depending on belonging of legal norms to the field of law there are legal institutes which have a particular branch character and complex character.

Lastly, these legal institutes form such subindustry of Ukrainian land law as state administration the land fund. The improvement of the legal adjusting of land state administration can be provided by conducting of its detailed analysis, generalizating positions which touch all relations of state administration the land fund in Ukraine, selecting such positions in a general institute and fixing it in a separate chapter of Section VII of the Land code of Ukraine.

The value of the achieved results consists in possibility of using conclusions of research in the process of perfection current legislation in the sphere of state administration the land fund in Ukraine.

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40. Evolution of Planning Law in Serbia – Comparison of Pre- and Post-Communist Trends

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The objective of this paper is to explore the impact of the transitional political and institutional context on the changes in planning legislation and its application in land development process. The theory of transition is rooted in the democratization theory that views transition as primarily a political process. The situation in Serbia, one of the republics of the former Socialist Federal Republic of Yugoslavia, offers excellent conditions for studying urban planning within a context of prolonged transition (or transformation). We look at cities in transitional societies as entities in which the societal processes manifest themselves in the most visible and significant ways. Serbian cities are the foci of the country's dominant political, economic, and cultural activities. The changes in legislative framework for the management and guidance of those cities can serve as an indicator of the societal dynamics in searching local solutions. Those solutions relate, on one hand, to the broad process of democratization, which is the key underlying element of transition. On the other hand, applications of the legislative framework result in urban opportunities and change in urban living conditions for many residents. We propose to present the case study of the change in planning legislation in post-communist Serbia by focusing on the processes that led to the enactment of the 2003 Planning and Construction Law. We will compare the institutional setup, planning contents and processes prescribed by pre- and post-communist planning laws.

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41. Contemporary land Ownership and Problem of Development in Central Area of Metropolitans in Developing Countries.

Case Study: Tehran

M.R. Pourjafar* , A. Taghvaee** A. Ranjbar***

Abstract

City centers are usually facing with the problems for implementation of planning and urban design projects. One of the basic problems of the implementation is the nature of the present laws and property rights of land ownership.

Tehran, the capital of Iran as a multi-center city is now facing with such problems and obstacles. Since last few decades many plans and urban design projects have been prepared and approved by planning and municipal authorities while most have just shelved. An important reason for this might have been the value of urban land. The value for one square meter of central areas like Tajrish (District 1 of Region1 of Tehran) is now has a price about 25-50 thousand$. This means that the municipality of Tehran has to pay a huge amount of money for land acquisition to be able to start the implemention of a project in regard with the improving the circulation system of the district .

Urban lands are usually under the private ownership, therefore it is too difficult for the municipality to purchase and utilize them for public purposes .Hence there is a need for new laws and regulations for property right with respect to land ownership and purposed build form in various projects.of course emphasizing on people participation is necessary in this regard. Furthermore , the new or revised laws and regulations should be have the power of changing the idea and attitude toward enhancement of public welfare. It means that when a number of citizens who own plots of lands that may have been more useful to the public should be satisfied to give the land voluntary to the municipality and get some other plots at other places instead.

The present paper would discuss the process and procedure for resolution the above mentioned problems through case studies of district 1 in Tehran. So that the gap between plan and implementation will be minimized by the help of new laws and property right.

Keywords: urban developement, land ownership,laws, regulations, central area,Tehran

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42. When the Void Begins to Matter

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This paper is based on an ongoing research on privately provided public urban space. Looking at a series of public space definitions in the urban design literature, the research offers a revised definition of open urban space by investigating such spaces as public goods through the lens of property rights. In particular, the research investigates the allocation of rights to alternative and sometimes temporary uses of open urban spaces. The conventional public supply of open spaces, the commonly held negative notion of privately provided public spaces, the allocation of land for public use in plans, the stakeholders involved in the design of such spaces as well as whom they serve are questioned and further explored and illustrated through contemporary examples.

The focus of the paper is on the mechanisms of open urban space supply and appropriation with the purpose of meeting public needs, especially within dense urban fabrics with high land value. Furthermore, the paper discusses the phenomenon of temporary land use assignment to public space by the city dwellers rather than governmental authorities or planers working in development. Due to their nature, **temporarily appropriated** open urban spaces cannot be seen on plans of the city and hence need a different method for their identification at moments in time when they are actually active. For the purpose of this paper, parking lots are examined; these lots also hold an overlay of other public activities.

Much attention is concentrated on the users, their needs, activities as well as their perceptions and valuation of open urban spaces within multi-cultural contexts. Two case studies within Beirut - Lebanon are presented: actual sites of temporary privately provided public spaces that have been investigated using a series of methods: a purposive survey, interviews, observations and participant observation, photographs, maps as well as documentation. The specific activity in the two examples is commercial, characterised by the familiar market event; moreover, these are cases of open urban spaces that allow for cross-cultural communication and secure the right to experience the entire city as opposed to just niches within the city. Beirut has undergone a series of drastic changes that affected land value as well as the nature of its urban spaces, thus making it an appropriate environment for examining the

considerations that lead to the realisation of appropriated open urban spaces; moreover, this enables the study of the conditions for social integration as well as the preservation of multiple identities.

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43. Cleverly-Crafted Confusion & Chaos: The Property Rights Debate

Bianca Putters

ABSTRACT:

In the United States, historically, land use regulation began as a method to protect landowners against damage to real property and/or the public due to the inconsiderate, negligent or dangerous acts of landowners on their land. Regulations were promulgated to curtail in some fashion certain dangerous and noxious land uses such as slaughter houses, tanneries and explosive device manufacturing plants, to name a few.

Somehow, these modest beginnings have evolved to the point today where property-rights advocates are pinned against environmentalists with a very confused group of landowners in between. These landowners are signing land regulation petitions and voting on issues based on fear coupled with a lack of understanding of the ultimate effects of their actions.

Cities and regions have the responsibility to pass planning laws to protect the natural and built environments. In order to accomplish this, the laws should, in part, curtail sprawl and its harmful consequences and provide for appropriate growth management. A variety of tools are available to meet these ends: historic preservation laws and urban growth boundaries are among them.

Unfortunately, property rights advocates have taken examples of inappropriate destructive land use decisions such as blanket destruction of neighborhoods via government redevelopment (including improper use of eminent domain) and convinced the public that any government regulation of property is harmful.

A key example of this type of difference of opinion between property rights advocates and environmentalists has been taking place in Portland, Oregon over several years. A planning program adopted for Oregon in 1973 created urban growth boundaries around all cities to curtail sprawl and to protect the environment. In November 2004, Measure 37 which weakened such land use regulations was passed. It required “just compensation” to property

owners whose use of their property was restricted and whose property values were decreased as a result of government regulations. In a dramatic about-face, Measure 49, fashioned to curtail development allowed by Measure 37, was passed in November 2007.

Oregon is not unique in with respect to these issues as other states and cities throughout the United States are undergoing similar conflicts; however, it is doubtful that Oregon's changes will not have an eventual ripple effect across the country.

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44. AN INTRODUCTION FOR VALUE CAPTURING AND GAME THEORY APPROACH

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Abstract:

Using value capturing as an alternative methods in funding transportation infrastructure development is not a new thing. It has been implemented in many countries in many ways because value capturing is not a simple funding tool but can be considered as a toolbox of funding methods. Basically, value capturing refers to the process by which all or a portion of increments in land value resulted from the installation of special public improvements, rather than landowner action, are recouped by the public sector and used for public purposes (Smith & Gihring, 2006). The increment of land and property values due to infrastructure development can be considered as positive externalities of the public investment. Therefore, value capturing can be seen as internalization mechanisms for the externalities generated from public goods providing.

As externalities resolving methods, value capturing mainly uses a neoclassical approach like applying tax increment value on land or property. However, using an institutional framework, externalities problems can be seen as the failure of defining and assigning property rights (see Coase, 1937; Barzel, 1997; Webster and Lai, 2003). Therefore, the solution for externalities problems should consider the clarification and assignment of property rights. Assigning property rights clearly involves interdependencies among individuals in an essential way. Along with that, interdependence in assigning property rights concerns payoffs and strategic choices. Choices are interdependent because an agent's best strategy may hinge on the strategies of others. This suggests an important role for game theory in analyzing externalities problems with regard to value capturing methods. Therefore, in this paper we will present an initial explorative concept for assigning property rights to be used for value capturing methods based on game theoretic approach. Along with that, kinds of strategic games in different kinds of property rights arrangement will be introduced and examined. It is the result

of an early exploration of the literature on the game theory and property rights within a PhD research project on value capturing for transportation infrastructure development.

Key words: *value capturing, property rights, game theory*

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45. COMMUNITY PARICIPATION AND PLANNING LAWS IN NIGERIA: THE LAGOS EXPERIENCE

Maxwell Chiazor[2], Felix Omole[2], Chrisopher Keshi[3] and Gloria Ubogu[4]

Lagos is one of the most urbanising cities in sub-Saharan Africa. Land use forms a critical part of its growth both for property and infrastructural developments. There is concern within the urban community that the land use and planning regulation silences public participation through its current mechanisms for community involvement. Advocates of participation often assume that more public participation will produce both better decisions and environmental advantages, but to date research has focused on the front-end of participation rather than the outcome. While procedural aspects of land distribution are important it is imperative that critical consideration is also given to what emerges from the implementation of vital aspect of the land use regulation.. This paper addresses this concern by focusing on land demarcation of the Lekki-Victoria housing scheme in Lagos. It describes some of the flaws inherent in the planning document and regulations and makes recommendation toward the improvement of the laws for effective urban development.

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46. Planning obligation in land development process: An experience from Kuala Lumpur.

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Abstract

Local planning authorities have been burdened not only with responsibilities to ensure developments and urban regeneration materialise in their local areas. Rather, at the same time they were also burden to ensure an acceptable living environment is achieved. To accomplish these objectives, many local planning authorities tend to impose planning conditions on planning applications and to a great extent, have entered into agreements with developers to ensure that the planning obligations were being carried-out. The current trend whereby the focus of planning has change from regulating to promoting development has led in planners now engage largely in deal making and negotiation rather than land use designation. This article explores the agreements involved in meeting the planning obligation as part of land development process in the context of Malaysia. It seeks to address the question of at which level of planning process that involved significant agreements between the local planning authority and private developers. This research adopted a case study of joint venture development of Mid Valley City in capital city of Kuala Lumpur between a private developer and City Hall of Kuala Lumpur. It based on semi structured interviews with planning officers at City Hall of Kuala Lumpur, other officials, the developer's senior officers' and review of a broad selection of planning documents of the planning process. It demonstrated that the developer made contact with local planning authority at an early stage of the planning process to determine the planning requirements and obligations that have to be met before official submission is made to obtain planning permission. Most importantly, the result is a planning mode that is realistic and flexible in meeting the main agenda to create not only a city in the city but also a well planned housing for the urban poor.

Keywords

Planning authority, land development, planning process, joint venture development

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47. Land development in Malaysia: A mission to accomplish the national agenda

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Abstract

It has been argued that land development activity is a fundamental dimension to both urban capacity and urban quality. It takes place not only to meet the needs and demands of society for shelter and the provision of buildings to live but also to sustain the environment, promote social accessibility and cultural value. Thus, land development is not just a simple process of translating demand into supply at a given time and place, but performs a significant role in the national economy, and represents an important sector of macro-economy activity. Against this background, this paper aims to identify the role of the state in land development activity in Malaysia. A case study approach is adopted to provide further understanding of this issue. The development of the Petronas Twin-tower in the capital city of Kuala Lumpur is explored to address the key question of to what extent the state plays its role in creating a new modern city in the city to meet the national objective. In addressing this question, a review of available documentation, which included the appropriate development order for the project issued by the planning authority, progress report on the development prepared by various government agencies in addition to series of in-depth interviews with respective planning officers as well as others involved in the development project were undertaken. The study also discusses some land-related policies which are adopted to guide this land development. A key conclusion from the experience of this land development is that the Malaysian government plays a fundamental role in land development activities. Its involvement commence from the initial planning stage at the national level up to the implementation of the policy at the micro level. The outcome witnessed a successful development of a modern city in the capital city of Kuala Lumpur.

Keywords

Land development, national objective, role of the state

Keywords
Land development, national objective, role of the state

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48. Mind the gap. The theory and practice of state rescaling: institutional morphology and the 'new' city-regionalism Planning land take for settlement purposes

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Abstract

Under the terms of the reformed English spatial planning system, the principal role of local planning authorities is to co-ordinate the activities of the myriad agencies which together shape the development process. At the core of this partnership approach to managing development are a suite of public and quasi-public economic development institutions, many of which have undergone a long history of repeated territorialisation re-situation. The result is the well-documented congested institutional environment and nested spatial hierarchy of policy interventions said to be characteristic of British place-based policy (for example, Audit Commission, 1999; Peck and Tickell, 2004). Despite this, popular advocacy for perpetual institutional manoeuvring has proceeded more or less unchecked finding its most recent manifestation in an agenda for an institutional apparatus to be situated at the scale of the city region (Core Cities, 2003; SURF, 2004).

Whilst academic concerns have primarily centred on the extent to which constructing a city-regional institutional apparatus would be a genuinely worthwhile endeavour, less attention has been devoted to its viability in light of existing attachments to long-established administrative geographies. This paper seeks to introduce a research agenda to confront this fundamental question. Drawing upon the theoretical corpus on state rescaling and the infant literature on "institutional morphology" (Fernie and McCarthy, 2001: 299) a preliminary study of the mutation of sub-city Urban Regeneration Companies (URCs) into trans-local, city-regional City Development Companies (CDCs) is advanced to initiate this project. Finally, in calling for further research in this area the paper concludes by suggesting that the expansive questions presented in this article may well be best approached via a methodology in keeping with the, commensurately expansive, critical realist epistemology.

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49. Planning land take for settlement purposes

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The National Sustainability Strategy, adopted by the German government in the year 2002, calls for, among other objectives, the ambitious target of reducing land take for settlement purposes to 30 ha/day by 2020. This would be a decrease to approximately one forth of the value of the past years. Due to the national planning and building law the federal government has no direct power to meet these objectives. Building land is usually set up by local authorities within the framework of the German planning system. In order to meet the objectives the federal government has three options:

- Amend the building and planning law by strengthening regulations aimed at controlling the quantity of land take for settlement purposes,
- Change fiscal policy instruments that promote land take for settlement purposes and
- Convince stakeholders (local authorities, investors,…) by informing about the negative consequences of land take for settlement purposes.

The first option does not fit in with the general political tendency of de-regulation. The second option leads – at least partly – to higher prices of land; this is also politically not beloved. Therefore the third option seems to be the most convenient way to be successful.

The basis of any communication policy is the knowledge of the relevant facts. To convince stakeholders to reduce land take for settlement purposes one has to know:

- Where and which land has been developed in the past years with the result of approximately 120 ha/day in the whole federal republic of Germany? Did this development occur legally?
- What were the reasons for this development? Could it have been possible to avoid the development on green land by other measures?

Using an GIS aerial photographs of an region in Germany have been analysed to locate the land take for settlement purposes during the past 10-15 years. This data was overlaid with the

boundaries of planned settlement areas in the local plans. Using this method the 1st research question can be discussed. For selected new settlement areas guided interviews with local authorities have been conducted to find the reasons for setting up building land. These results lead to first answers to the second question.

The paper starts with an introduction to German sustainability targets and the German planning and building law. On this basis there will be developed the research questions. Further on the empirical research approach is being presented and the results are being shown. Finally there will be presented hypotheses on what action is needed to decrease land take for settlement purposes.

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50. Public Value Capturing and the financing of public infrastructure in England, Valencia and The Netherlands

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Abstract: From a legal perspective, ownership over land and property is in many countries usually strongly protected. However, there is still room for a different interpretation of property rights in relation to the private financing of public infrastructure (private developers contribute to servicing the land, roads, public space, public building, etc, either by implementing them directly, either paying to public bodies for doing so), and to Public Value Capturing (public bodies receive part of the increasing property values).

There may be more or less consensus about private developers contributing to the public infrastructure that is necessary to enable the development. However, the question here remains open how 'necessary to enable the development' is defined in the legal framework and how this turns out to be in practice. The link between the public infrastructure and the development seems to be elastic. For example, some sorts of off-site public infrastructure are in England and Spain considered as related to the development, even if they are located far away from the site in question.

Regarding Public Value Capturing, from one point of view, increasing property values – no matter what caused them – belong to the owner of the property. However, from another point of view, development rights do not belong to the landowner, but to the public, as it is the land use plan that assigns development possibilities to the land. Here, the issue of public value capturing also relates to social justice principles. This point of view has crystallized differently in different countries. E.g. in the UK development rights are supposedly nationalized since 1947, although different attempts to traduce this in a 'betterment tax' in the fifties and the seventies seem to have failed. Another example is the Spanish Constitution of 1978, which states that 'The community shall have a share in the benefits accruing from the town-planning policies of public bodies' (section 47), a constitutional principle that in practice has resulted in the Municipalities obtaining at least 10% of the planning gains in green-field development schemes.

This paper ~~summarizes the results of on-going research to the planning system of~~ England, Spain and the region of Valencia, and The Netherlands. First, the legal frameworks regarding these topics will be summarized. Finally, the paper will provide some empirical data about how these legal principles have crystallized in practice in Urban Regeneration: how much does the private market pay?

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51. Novelties on land value capture in Spain: the 8/2007 Land Act's new paradigm on land valuation.

Carlos Marmolejo Duarte

Abstract

The first comprehensive urban legislation at Spain, the "Town and Country Land Act" (TCLA), dates back to 1956. The main merit of such legislation was to build the basis that supported the huge expansion of the Spanish cities in a context of economical recession and international autarchy. From the land valuation perspective, the 1956 TCLA introduced an innovation that allowed the impoverished land owners to become into active urban developers, in a context where formal investors were a scarce and rare good. Such invent consisted in guarantee, to the proprietors, the future capital gains to be produced as a consequence of the urbanization process, by means of the planning system. So, for more than 50 years, by law, the land was valued according to its future urban potential, without considering its actual, real, and present condition; with this system it was possible to mortgage the developments using the original land as a guaranty. Spain is not more what it was fifty years ago, and it is also reflected in the new urban legislation; in this context, the 8/2007 Land Act, recently approved by the Congress, is one of the most important milestones on the Spanish land management system of the last five decades. The key changes have been two: firstly, the almost exclusive right of land owners to promote the urban development has been relaxed, and now others non‐proprietors can start a development process on third's land; secondly, the great invent of the 1956 TCLA has been completely wiped out, since the land is no more assessed according to its future value, but only considering its tangible and actual reality. The model based in urban fiction has been transformed into other based on urban realism. What's more, the new model is more oriented towards land value capture of public gains, and in this aspect is more coherent with the correspondent 1978's Spanish Constitutional precept. In this paper I highlight the differences between the actual and previous valuation system, and discuss further implications of such revolution.

Key words

Public value capture, Spanish 8/2007 Land Act, Land Valuation.

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A preliminary draft of this paper has been lectured on the Land Market Course at the Lincoln Institute of Land Policy (November, 2007).

52. Building rights as property rights

Claudio Monteiro

Abstract

The aim of this paper is to advocate the progressive dissociation of building and land property rights as a way to reconcile private ownership of space with public control of city government and planning.

Urban property in civil law countries have been traditionally limited by the right of accession that gives the owner of the land full ownership of every construction made above and bellow the ground.

This vertical projection of property constitutes one of the major constraints imposed by urban land ownership on planning, as modern cities tend to be vertical themselves and depend on the superposition of different uses and users to function.

Despite the evolution occurred in most European countries with the advent of condominium laws and other forms of horizontal or divided property like the right of superficies and long leases, full dissociation between building and land property rights has not yet been achieved.

The dissociation between building and land property rights is essential to release urban planning and design from the legal structure of land property by allowing planners to distribute built space based on their best judgment on the good form of the city and not on the limits imposed by the actual form of privately owned land parcels.

Furthermore, when dissociated from the ownership of built space, urban land may be commonly or collectively owned without affecting private ownership of building and apartments, thus facilitating the management of common or public spaces of the city.

By limiting the object of property itself to built space or to the right to build it, building rights focus property rights on the use of space allowed by planning decisions rather than on urban land domain, and constitutes an important way of promoting private real state entrepreneurship against land speculation.

This focus on the use of space gives local government control of city planning over land ownership domain and therefore allows building rights to receive full protection as property rights, thus securing both private investments and public needs.

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52. Local urban regeneration policies and single European Market regulations

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This paper discusses the effect of single European market regulations (such as state aid and public procurement) on local urban regeneration policies. The cooperation between public and private sector actors is the most common way of developing and implementing large-scale urban regeneration projects which are instrumental for establishing new forms of entrepreneurial governances. Single EU market regulations have been effective in the land development processes in urban regeneration projects throughout Europe. The question is to what extent these regulations have a direct and indirect impact on the (re)formulation of local urban regeneration policies? And what new strategies and policy instruments have been developed by local governments as a reflection to the EU regulations while implementing public-private partnership projects?

The paper provides in-depth analysis on the local reflections to the single European market regulations and their urban dimension with a couple of European cases (such as Milano in Italy, Amersfoort in The Netherlands, and Valencia in Spain). Moreover, the paper also emphasizes the growing need for the consciousness of the European policy-makers on the importance of local urban development systems.

53. The Public Interest: Expropriation of Property Rights – A Historical Perspective –

Greg Lloyd

Abstract

Contemporary debates turn on modern understandings of the market economy, established and evolving state-market-civil relations, defined public policies, and regulatory regimes. In this context, we construct our understandings of the nature of land and property development, the purpose of land use planning and spatial planning, and consider how these are reconciled through different articulations of the public interest. Fundamental to these debates, although often obscured, misunderstood, or simply ignored, is the mediating and enabling mechanism of property rights. In the context of land and property development, the composite of private, common and public rights is critical in facilitating change to take place, and to influence the ways in which the management of change in the wider societal or public interest is secured. These private, common, and public relations have evolved over time, and have been modified in the light of emerging conditions, localities and contexts. Synthesising regulationist and transactions costs perspectives, this paper proposes to examine historical insights into the emergent expropriation of property rights in the public interest. In particular, it will take the early arguments for the common ownership of land as advocated by William Ogilvie, a moral philosopher of the C18th. This perspective can provide insights into contemporary state-market- civil relations in land and property and inform our construction of appropriate regimes to enable land and property development in the public interest.

54. Marine Property Rights and the Re-territorialisation of Space: A Transactions Costs Perspective

Deborah Peel

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The governance of the coastal-marine interface represents a particular challenge since it involves a complex mix of common, legal, and customary property rights. The Planning etc (Scotland) Act 2006 offers an important contribution to these relations. The extension of land use planning controls in the legislation to include the coastal and transitional waters (i.e. out to the 12-nautical mile limit) now means that finfish and shellfish farming will be subject to statutory planning controls. These fall to the established local (terrestrial) planning authorities to manage and enforce. Through an elaboration of the timeline to explain the introduction of the planning controls, this paper will examine the competing arguments for and against regulation of marine property regimes in this way. In particular, it will consider the positions of the principal stakeholders: the landowner (the Crown Estate Scotland); the aquaculture industry; and the public interest – as mediated by local government. The discussion will deploy transaction costs arguments to explain the new state-market-civil relations that have arisen as a consequence of the new regulatory regime and its attendant property rights.

55. THE IMPACT OF PROPERTY RIGHTS TO URBAN SPATIAL TRANSFORMATION- DISTRICT 1ST, HO CHI MINH CITY CASE STUDY

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Abstracts :

This study explores the relationship between urban spatial and property rights over 15 years by studying in detail the spatial and property history of a particular area, and tracing transformations in urban spatial to the major factors influencing property owners who caused or permitted these changes to occur. This case study will be conducted in the Central Business Area of the district 1st in Ho Chi Minh City, where zoning systems controlled, and continue to control, the kinds of land uses and therefore, the private construction appearance to answer the question if the property rights in Ho Chi Minh City have characteristics that are similar to property rights in general.

Methods used to study the pattern of land cover change and property boundary changes over time are aerial photo interpretation and geographic system analysis (GIS). Processes driving urban spatial transform through the agency of property owners and tenants were studies using population and urban censuses for the area, content analysis of 260 questionnaires and local newspapers, interviews, and property title searches. The detailed study drew on the legal and regulatory context for development of property rights in land and spatial, and on the history of construction and of planning in the central area.

Results are presented in a series of maps of housing and property change. Housing changed from first storey house to fourth storey house up to complex commercial-residential, and property holdings shifted from small to very large parcels. The field is trying to explore the real estate properties as a pattern on the landscape and a set of dynamic human relationships, repeated negotiation, dispute resolution, and uncertainties. Freehold other than simple ownership is shown to be important in urban spatial change. Multiple factors, which include property rights, gentrification, are shown to work together and to cause urban spatial transformation. The recent study concludes that the regular negotiations about property rights in real estate property, both

formal and informal, make a major contribution to how people assume about property and what kinds of property uses to make of it. The study suggests that examining planning as a property process and recognizing it as part of a larger negotiation process with respected to property rights, will improve the success of planning implementation.

Key words: Property Rights, Urban Transformation, Ho Chi Minh CBD

56. The right to be heard in administrative law compared with planning law: A cross-national evaluation

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The public's right to be heard is part of administrative law of most democratic legal systems, also known as part of "natural justice". It allows citizens some protection against damaging government actions, obligating government authorities to offer the opportunity for a fair hearing. The legal right to be heard has been absorbed into most planning-law systems. In practice it is one of the mechanisms for public participation in the planning process.

In this paper we will compare the right to be heard in planning to the “classic” right to be heard in administrative law. We shall ask whether the right to be heard in planning as a mechanism for public participation is indeed more progressive than the “classic” right to be heard in administrative law, as may be expected on the basis of current planning theories.

The paper will present a comparison between the right to be heard in Administrative law and planning law in 3 countries: England, The Netherlands and Israel. We will analyze the following issues:

1. The span of parties entitled to be heard
2. The range of interests permitted
3. Accessibility – Are there any threshold requirements that may restrict accessibility?
4. Publication obligations – What are the main ways used for informing the public?
5. Hearing conduct – What are the rules regarding the conduct of hearings? Are these observed in practice or perhaps expanded upon?
6. Opportunities – How many opportunities are there to be heard during the statutory administrative process?

To answer these questions, we used a variety of methods:

- Thorough review of the academic literature spanning the fields of law, planning and social sciences (in English, Hebrew, and some Dutch items translated for us)
- Review of the relevant statutes and key court decisions in the three countries
- Development of a set of criteria for evaluation
- Development of interview questionnaire based on these criteria
- Selection of case-study local governments in the three countries and personal interviews with key professionals or elected officials in each country
- Systematic comparative analysis of the findings based on the set of criteria for evaluation

Our findings indicate that there are interesting dissimilarities between the countries as to how progressive is the right to be heard in planning as compared to the classic right to be heard in administrative law. Our conclusions analyze these implications for cross-learning in planning law and practice

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57. Right of entry before expropriation – the challenge to ECHR

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The main aim of this paper is to examine the institution of the right of entry on land before issuing of an expropriation order. This examination will be based on the Polish land use law. The paper focuses on the Polish practice of an early transfer of possession before acquisition of land and the consequences of the lack of compensation for such actions.

In the first part of the paper an overview of Polish regulation of the right of entry is presented in which two types of an early transfer of possession are distinguished:

- right of entry after issuing a decision on localization (roads and railroads)
- right of entry during an expropriation procedure before the payment of compensation.

The paper evaluates each of these approaches. Both instruments have one common element, that is legalizing land taking before establishing the amount of compensation. Such practices lead directly to the situation when the compensation is paid significantly later than the transfer of possession is completed. The paper attempts at determining if such regulations and practices are in conformity with the European Convention on Human Rights. The question that needs to be addressed is whether such instrument can be regarded as an unlawful "deprivation of possession" in the meaning of Article 1 First Protocol to ECHR It is argued that the aforementioned regulation breaches ECHR because in the time of the factual lost of land an owner is not compensated.

Further, the examples of resolving the problem of an early acquisition of land in Germany and the Netherlands are presented. On the basis of such examination the paper proposes the fairest method to be applied in the Polish system, that is transferring of possession before expropriation linked with the advance payment of compensation based on a provisional evaluation made by a public agency.